

PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES

IN THE MATTER OF:

Phillip W. Green
(NAME OF PETITIONER)

Case No.: 142299

FILED
Department of Financial Services
Agency Clerk
Date: 9/27/13

IMPORTANT: BEFORE FILING, PLEASE READ STATUTE AND RULES
ATTACHED TO THIS DOCUMENT

Petitioner, Phillip W. Green, pursuant to Sections 120.565 and/or 633.001(6), Florida
(Name of Petitioner)

Statutes, Rule Chapter 28-105 and/or Rule 69A-60.007, Florida Administrative Code, hereby requests a
declaratory statement from the Florida Department of Financial Services and as grounds therefore states the
following (IN ALL CASES, ATTACH ADDITIONAL PAGES IF NEEDED, USING THE CORRESPONDING NUMBER FOR EACH
SECTION ADDRESSED).

1. Petitioner's Name and Address: 1*

Name Phillip W. Green
Address 21500 Three Oaks Pkwy, Estero, FL 33928
Telephone Number 239-390-8000
Facsimile Number 239-390-8000
e-mail address (if any) green@esterofire.org

2. Name and Address of Petitioner's Attorney or Qualified Representative, if any:

Name, (Attorney/Qualified Representative)
Address
Telephone Number
Facsimile Number
e-mail address (if any)

3. Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on Which the Declaratory
Statement is Sought (Please Include Specific Subsections, if any):

1* NOTICE: if this request is made and this form is completed by an authority having jurisdiction for a county,
municipality, or special firesafety district, and the request concerns an interpretation of the Florida Fire
Prevention Code, the Petition must be signed by the senior administrative firesafety official of the authority
having jurisdiction, such as the fire marshal or a similarly situated or designated person or a fire chief. Only the
senior administrative firesafety official or a fire chief has standing to petition for a declaratory statement
regarding the Florida Fire Prevention Code on behalf of an authority having jurisdiction.

4. Description of How the Statute(s), Agency Rule(s), Agency Order(s), and/or Code Section(s) May Substantially Affect the Petitioner in the Petitioner's Particular Set of Circumstances:

a. Facts: Estero Fire Rescue, an independent special taxing district is exploring the adoption of a requirement to install residential fire sprinklers in one and two family dwellings. Two water purveyors serve Estero Fire Rescue and statutory clarification is needed prior to completing the required economic benefit report

b. Arguments: 633.208 (8) States that a local jurisdiction or utility may not charge any additional fee above what is charged to a non fire sprinklered dwelling on the basis that a one or two family dwelling unit is protected by a fire sprinkler system.

5. Address of the Subject, Structure, or Proposed Structure, Affected by this Petition, if Applicable:

N/a

6. If this Petition Involves a Ruling of an Authority Having Jurisdiction, the Name, Address and Phone Number of the Authority Having Jurisdiction:

Phillip W. Green Fire Marshal
21500 Three Oaks Pkwy
Estero, Florida, 33928

7. Please Check the Box Indicating Whether You Filed an Appeal of a Ruling of the Authority Having Jurisdiction, if applicable:

PLEASE NOTE: Rule 69A-60.007(5), Florida Administrative Code, on the last page of this document, requires that a person having a dispute with a local fire official regarding the Florida Fire Prevention Code, must complete the local appeal process PRIOR to filing a petition for declaratory statement. Therefore, if your circumstances involve a dispute with a local fire official and you have not appealed the decision of the local fire official, this petition will be dismissed until the local appeal process has been completed and you have received an adverse ruling by the local appeals board, commission, or council.

Yes, Appeal Filed No, Appeal Not Filed Not Applicable

8. If an Appeal was Filed, Please State the Response or Outcome of the Appeals Board and Attach a Copy of All Official Orders or Notices:

9. Have You Filed or Do You Plan to File this or a Similar Question with any Other State or Local Agency?

Yes • No

10. If Yes, Please State the Name of Each State or Local Agency:

N/A

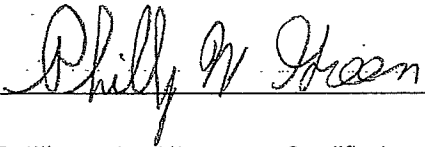
11. Are you involved in any litigation related to the question(s) presented in this case? Yes • No

12. If yes, please describe briefly

13. **QUESTION(S)** (Please be Specific):

Is it the intent of 633.208 (8) to prevent a local jurisdiction or utility to require the installation and cost of a separate water connection for a residential sprinkler system installed in a one or two family dwelling when the required design professional has determined that the domestic water connection is adequate to provide both domestic and fire sprinkler demand?

Respectfully submitted this 25 day of September, 2013.

 2

*
Petitioner (or Attorney or Qualified Representative for Petitioner)

Mail original to:

Agency Clerk
Division of Legal Services
Florida Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0390

Or file electronically at: Julie.Jones@myfloridacfo.com

(Send the preceding three page form only. You need not send the accompanying rules or statutes on the next page which are provided for your information and convenience.)

Please note that the use of this form containing the information in it is neither solicited nor required; however, if used and filled out completely, it complies in all respects with the requirements of the law and all rules pertaining to declaratory statements, and will assist the division in expediting the proceeding.

Declaratory Statements: FLORIDA STATUTES

120.565 Declaratory statement by agencies.—

- (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set or circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.
- (3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a

2* Please see footnote 1 relating to the authorized signature for an authority having jurisdiction.



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

FILED

DEC 13 2013

Docketed by *JA*

In The Matter Of:

Phillip W. Green, Fire Marshal
Estero Fire Rescue

Case No.: 142299-13-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the filing of a Petition for Declaratory Statement (Petition) by Phillip W. Green, Fire Marshal, Estero Fire Rescue, (Petitioner), received by the Department of Financial Services (Department), Division of Legal Services, on September 27, 2013. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. The Chief Financial Officer, as State Fire Marshal, has jurisdiction over the subject matter of the Petition.

2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition. Any modification to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as being true and Petitioner's questions are being

answered as purely hypothetical.

3. If the Petition contains various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not used as legal premises or authority for the conclusions of this Declaratory Statement.

BACKGROUND AND FACTS ASSERTED

4. A Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.104(6), Florida Statutes, Chapter 28-105, Florida Administrative Code, and/or Rule 69A-60.007, Florida Administrative Code.

5. The Petition states that Estero Fire Rescue, an independent special taxing district, is exploring the adoption of a requirement that residential fire sprinklers be installed in one- and two-family dwellings. Two water Purveyors serve Estero Fire Rescue.

6. The subject of the Petition is whether the intent of Section 633.208(8), Florida Statutes, is to prohibit a local jurisdiction or utility from requiring the installation of a separate water connection in one- or two-family dwellings if the dwellings are required to have residential fire sprinklers.

7. Receipt of the Petition herein was published in Volume 39, Number 207 of the Florida Administrative Register, on October 23, 2013.

QUESTION PRESENTED

8. Is it the intent of Section 633.208(8), Florida Statutes, to prohibit a local jurisdiction or utility from requiring the installation and cost of a separate water connection for a residential sprinkler system installed in a one- or two-family dwelling

) when the required design professional has determined that the domestic water connection is adequate to provide both domestic and fire sprinkler demand?

DISCUSSION

9. The Department has authority pursuant to Sections 120.565 and 633.104(6), Florida Statutes, and Chapter 28-105, Florida Administrative Code, to issue Declaratory Statements when requested in writing by a substantially affected person or an Authority Having Jurisdiction regarding the Department's opinion as to the applicability of a statutory provision over which the agency has authority to the Petitioner's particular set of circumstances.

) 10. Section 633.208, Florida Statutes, is entitled "Minimum firesafety standards." It generally requires that the Florida Fire Prevention Code, adopted by the State Fire Marshal, shall be deemed adopted by each municipality, county, and special district with firesafety responsibilities and that each municipality, county, and special district with firesafety responsibilities shall enforce the Florida Fire Prevention Code as the minimum firesafety code.

11. Subsection (8) of Section 633.208, Florida Statutes, provides that the provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, do not apply to newly constructed one-family and two-family dwellings. However, local governments may adopt fire sprinkler requirements for one- and two-family dwellings under this subsection. This section also contains various other provisions related to the implementation of a fire sprinkler requirement on one- or two-family dwellings by any local government.

) 12. Subsection (8) of Section 633.208, Florida Statutes, specifically states: "[i]n addition, a local jurisdiction or utility may not charge any additional fee, above

what is charged to a non-fire sprinklered dwelling, on the basis that a one- or two-family dwelling unit is protected by a fire sprinkler system.”

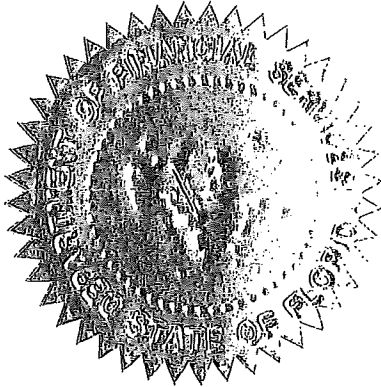
13. Section 633.208(8), Florida Statutes, does not specifically address a separate water connection for dwellings that are required to have residential sprinkler systems. However, a local government or utility is not prohibited by law from requiring a separate water connection.


14. Residential fire sprinkler systems are required to be installed in compliance with the requirements of the *Florida Fire Prevention Code* and adopted reference standards including NFPA 13D, *Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes*, 2007 edition. A separate water connection is not required for sprinkler systems installed in one- or two-family dwellings.

CONCLUSION

NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that the Petitioner is a substantially affected person and is entitled to the issuance of this Declaratory Statement. The Department finds that the intent of Section 633.208(8), Florida Statutes, is to prohibit a local jurisdiction or utility that adopts a sprinkler requirement for one- or two-family dwellings from requiring a dwelling owner to incur the cost of a separate water connection when said cost will accrue to the benefit of the local jurisdiction or utility and the required design professional has determined that the domestic water connection is adequate to provide both domestic and fire sprinkler demand.

DONE and ORDERED this 12 day of DECEMBER, 2013.




Jay Etheridge
Deputy Chief Financial Officer
Department of Financial Services

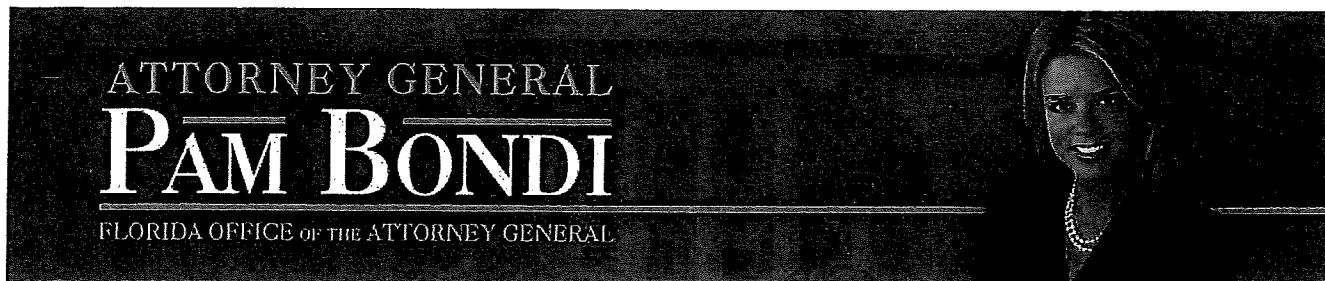
NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, Florida Rules of Appellate Procedure, because pursuant to Section 120.565, Florida Statutes, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings must be instituted by filing a petition or notice of appeal with Julie Jones, Agency Clerk, Division of Legal Services, 612 Larson Building, Tallahassee, Florida 32399-0333, and a copy of the same with the appropriate district court of appeal within 30 days of rendition of this Declaratory Statement.

Copies furnished to:

Phillip W. Green, Fire Marshal
Estero Fire Rescue
21500 Three Oaks Pkwy
Estero, FL 33928

R. Terry Butler, Esq.
Assistant General Counsel
Department of Financial Services
Room 612A, Larson Building
Tallahassee, FL 32399-0333

**Advisory Legal Opinion - AGO 2009-09**[Print Version](#)

Number: AGO 2009-09
Date: February 23, 2009
Subject: Counties, inspection fee for fire sprinkler systems

Mr. Michael S. Craig
County Attorney
Polk County
Post Office Box 9005
Bartow, Florida 33831-9005

RE: FIRE PREVENTION CODE - COUNTIES - BUILDING INSPECTIONS - FEES -
authority of county to impose additional review and inspection fees for
single and two-family dwellings with fire sprinkler protection. ss.
633.025 and 633.551, Fla. Stat.

Dear Mr. Craig:

You ask the following question:

May a county charge a plans review fee for a fire inspector to review plans and inspect installation of a fire sprinkler system in a one-family or two-family dwelling to ensure compliance with the Florida Fire Prevention Code when the county has permitted fire sprinkler protection pursuant to section 633.025(9), Florida Statutes?

In sum:

Section 633.025(9), Florida Statutes, would preclude a local government from charging an additional fee for plans review or inspection, above what is charged to a non-fire sprinklered dwelling, because a one-family or two-family dwelling is protected by a fire sprinkler.

You state that a local developer, pursuant to section 633.025(9), Florida Statutes, has opted to require fire sprinkler protection within a development, in lieu of installing other required fire protection. This section contains language that appears to prohibit a local jurisdiction or utility from charging any additional fee for plan review or inspection, above what is charged for dwellings without sprinklers, on the basis that a one-family or two-family dwelling has a fire sprinkler system.

Section 633.551, Florida Statutes, recognizes the authority of local governments to regulate the quality and character of work performed by contractors. It specifically states:

"Nothing in this act limits the power of a municipality or county to regulate the quality and character of work performed by contractors through a system of permits, fees, and inspections which are designed to secure compliance with, and aid in the implementation of, state and local building laws or to enforce other local laws for the protection of the public health and safety." [1]

Section 633.025, Florida Statutes, establishes the Florida Fire Prevention code and the Life Safety Code adopted by the State Fire Marshal as the minimum fire safety standards for each municipality, county or special district with fire safety responsibilities. [2] Subsection (9) of the law states:

"The provisions of the Life Safety Code shall not apply to newly constructed one-family and two-family dwellings. However, fire sprinkler protection may be permitted by local government in lieu of other fire protection-related development requirements for such structures. . . . In addition, a local jurisdiction or utility may not charge any additional fee, above what is charged to a non-fire sprinklered dwelling, on the basis that a one- or two-family dwelling unit is protected by a fire sprinkler system." (e.s.)

As a more specific law enacted at a later date, [3] the provision in section 633.025(9), Florida Statutes, would prevail and act as an exception to the more general grant of authority in section 633.551(1), Florida Statutes. [4]

Thus, section 633.025(9), Florida Statutes, would preclude a county from charging a plans review fee for a fire inspector to review plans and inspect the installation of a fire sprinkler system in a one-family or two-family dwelling to ensure compliance with the Florida Fire Prevention Code, when no such fee is charged for a dwelling that does not have fire sprinkler protection. Accordingly, a county may not charge an additional fee to review plans and inspect installation of a fire sprinkler system in a one-family or two-family dwelling.

Sincerely,

Bill McCollum
Attorney General

BM/tals

[1] Section 633.551(1), Fla. Stat. Subsection (2) states:

"Nothing in this act limits the power of a municipality or county to adopt any system of permits requiring submission to and approval by the municipality or county of plans and specifications for work to be performed by contractors before commencement of the work, except that no municipality or county shall require a fire protection system contractor's shop drawings to be sealed by a professional engineer."

[2] See s. 633.025(1), Fla. Stat.

[3] The language in s. 633.025(9), Fla. Stat., precluding the charge of additional fees on the basis that a one-family or two-family dwelling is protected by a fire sprinkler system was added to the section in 2005 by s. 17, Ch. 2005-147, Laws of Fla.; s. 633.551, Fla. Stat., was enacted by s. 16, Ch. 75-240, Laws of Fla. (1975), and remains unchanged.

[4] See *McKendry v. State*, 641 So. 2d 45 (Fla. 1994) (specific statute covering a particular subject area will control over a statute covering the same and other subjects in more general terms); *Rowe v. Pinellas Sports Authority*, 461 So. 2d 72 (Fla. 1984) (when a special act and a general law conflict, the special act will prevail); *Florida Association of Counties, Inc. v. Department of Administration, Division of Retirement*, 580 So. 2d 641 (Fla. 1st DCA 1991), approved, 595 So. 2d 42 (Fla. 1992) (general rule is that in cases of conflicting statutory provisions, latter expression will prevail over former).

Florida Toll Free Numbers:

- Fraud Hotline 1-866-966-7226

- Lemon Law 1-800-321-5366



Advisory Legal Opinion - AGO 95-26

[Print Version](#)

Number: AGO 95-26

Date: April 6, 1995

Subject: Disconnect/water service would disable fire protection

Mr. Geoffrey B. Dobson
St. Augustine City Attorney
66 Cuna Street, Suite B
St. Augustine, Florida 32084

RE: FIRE SAFETY--MUNICIPALITIES--PUBLIC UTILITIES--municipality may not disconnect water service, absent a court order, such that preengineered fire protection system would be disabled. s. 633.171, F.S.

Dear Mr. Dobson:

You ask substantially the following question:

Does section 633.171(2)(a), Florida Statutes, preclude a city from disconnecting water service to a consumer for nonpayment when the building to which service is provided has a preengineered fire protection system?

In sum:

Section 633.171(2)(a), Florida Statutes, operates to preclude a city, absent a court order, from disconnecting water service to a preengineered fire protection system required by statute or rule when to do so would render such system inoperative.

You state that the City of St. Augustine owns the local water utility service. Pursuant to section 180.13, Florida Statutes, the governing body of a municipality may establish just and equitable rates to be paid to the municipality for the use of a utility by each person, firm or corporation whose premises are served. If the charges are not paid when due, the municipality may recover such sums by suit in a court having jurisdiction in the municipality or by discontinuance of the service until the delinquent charges for the service are paid.[1] There is some question, however, whether the city may discontinue water service to delinquent customers who have preengineered fire protection systems that are required by law or rule.

It has been judicially recognized that a municipality may discontinue water services furnished by the city when the consumer fails to pay the water bill. [2] As noted above, the Legislature has authorized such action when a person using a public utility fails to pay the charges when due.

Section 633.171(2)(a), Florida Statutes, however, provides:

"(2) It shall constitute a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, to intentionally or willfully:
(a) Render a fire extinguisher or preengineered system required by statute or by rule inoperative except during such time as said extinguisher or preengineered system is being serviced, tested, repaired, or recharged, except pursuant to court order."

The statute clearly makes it a criminal offense to disconnect the water supply to a required preengineered fire protection system such that the system is rendered inoperable, unless by order of a court. Where the Legislature has set forth exceptions to the operation of a statute, no others may be inferred. [3] In this instance, absent a court order, disconnection of water that renders a preengineered fire protection service inoperable could subject the municipality to criminal sanctions. There is no statutory or judicial exemption for municipally owned water systems from the provisions of the statute. Thus, a municipally owned water utility may not, absent a court order, disconnect the water supply to a preengineered fire protection system that is required by law or rule such that the system is rendered inoperable without subjecting itself to the criminal liability imposed in section 633.171(2)(a), Florida Statutes. [4]

An example of a fire protection system that is required by statute is contained in section 553.895, Florida Statutes. That statute states:

"Except for single-family and two-family dwellings, any building which is of three stories or more and for which the construction is let after January 1, 1994, regardless of occupancy classification and including any building which is subject to s. 509.215, shall be equipped with an automatic sprinkler system installed in compliance with the provisions of chapter 633 and the rules and codes adopted pursuant thereto." [5]

Section 553.895(2), Florida Statutes, has expansive coverage in requiring automatic sprinkler systems in practically all buildings with three or more stories, except for those that are a single-family or two-family dwelling.

Accordingly, it is my opinion that a municipality is subject to section 633.171(2)(a), Florida Statutes, if, without a court order, it discontinues water service to a structure that has a preengineered fire protection system that is rendered inoperable by such action.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] Section 180.13(2), Fla. Stat. (1993).

[2] See *State v. City of Miami*, 27 So. 2d 118, 126 (Fla. 1946).

[3] See *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952).

[4] See *Alsop v. Pierce*, 19 So. 2d 799, 805 (Fla. 1944) (legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way).

[5] Section 553.895(2), Fla. Stat. (1993).

Florida Toll Free Numbers:

- Fraud Hotline 1-866-966-7226

- Lemon Law 1-800-321-5366